

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Hypertherm, Inc.

v.

Civil No. 05-cv-373-JD

American Torch Tip Company

O R D E R

Hypertherm, Inc. moves for summary judgment on the affirmative defenses of patent enforceability, patent validity, and part of its infringement claim. In response, American Torch Tip Company ("ATTC") asks that the time for its response to the motion be stayed until after claim construction is complete. Hypertherm objects to a stay, arguing that claim construction will not affect the issues raised in its motion.

In the court's experience, resolving claim construction tends to change the landscape of a patent case. Although Hypertherm may be correct that claim construction would not specifically affect the analysis of the issues raised in its motion for summary judgment, the court cannot rule out other changes, such as a reduction in ATTC's affirmative defenses, which could make a decision on the motion unnecessary. Further, the claim construction briefs have been submitted, and the Markman hearing is scheduled for January 16 and 17, 2008.

Conclusion

For the foregoing reasons, the defendant's motion to stay its response to the plaintiff's motion for summary judgment (document no. 144) is granted to the extent that the defendant's response to the motion (document no. 133) will be due **thirty days** after the claim construction order is issued unless a party files a timely motion for reconsideration, in which case the time will not begin to run until the court's order is issued resolving the motion for reconsideration.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

December 20, 2007

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